

AMENDED IN ASSEMBLY MAY 31, 2016

AMENDED IN ASSEMBLY APRIL 6, 2016

AMENDED IN ASSEMBLY MARCH 17, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2298**

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**Introduced by Assembly Member Weber**

February 18, 2016

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An act to amend Section 186.34 of, and to add Section 186.35 to, the Penal Code, relating to criminal gangs.

LEGISLATIVE COUNSEL'S DIGEST

AB 2298, as amended, Weber. Criminal gangs.

Existing law, the California Street Terrorism Enforcement and Prevention Act ~~(act)~~ and (*act*), provides specified punishments for certain crimes committed for the benefit of, at the direction of, or in association with, a criminal street gang, as specified. The act defines a “shared gang database” as having various attributes, including, among others, that the database contains personal, identifying information in which a person may be designated as a suspected gang member, associate, or affiliate, or for which entry of a person in the database reflects a designation of that person as a suspected gang member, associate, or affiliate. Existing law requires a law enforcement agency, before designating a person as a suspected gang member, associate, or affiliate in the database, to provide a written notice to the person’s parent or guardian, if the person is a minor.

This bill would require the notice described above to be provided to an adult before designating a person as a suspected gang member, associate, or affiliate in the database. The bill would require these

databases to comply with federal requirements regarding the privacy and accuracy of information in the database, and other operating principles for maintaining these databases. The bill would require local law enforcement, commencing ~~December 1, 2017~~, *January 15, 2018*, and every ~~December 1st~~ *January 15* thereafter to submit specified data pertaining to the database to the Department of Justice, and would require the Department of Justice, commencing ~~January 1~~, *February 15, 2018*, and every ~~January 1~~ *February 15* thereafter, to ~~submit a report containing that information to the CalGang Executive Board and to the Legislature.~~ *post that information on the department's Internet Web site.* The bill would require that a person designated as a suspected gang member, associate, or affiliate in a shared gang database who has not been convicted of a violation of gang-related crimes, as specified, within 3 years of the initial designation be removed from the database.

By imposing additional duties on local law enforcement entities, this bill would impose a state-mandated local program.

The bill would establish a procedure for a person designated in a shared gang database to challenge that designation through an administrative hearing and appeal to the superior court.

By requiring local law enforcement to implement an appeal process for persons designated in a shared gang database, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 186.34 of the Penal Code is amended to
- 2 read:
- 3 186.34. (a) (1) For purposes of this section, “shared gang
- 4 database” shall mean any database that satisfies all of the following:
- 5 (A) Allows access for any local law enforcement agency.

1 (B) Contains personal, identifying information in which a person  
2 may be designated as a suspected gang member, associate, or  
3 affiliate, or for which entry of a person in the database reflects a  
4 designation of that person as a suspected gang member, associate,  
5 or affiliate.

6 (C) Is subject to Part 23 of Title 28 of the Code of Federal  
7 Regulations. If federal funding is no longer available to a database  
8 through the federal Omnibus Crime Control and Safe Streets Act  
9 of 1968 (42 U.S.C. Sec. 3711 et seq.), a database shall not have  
10 to satisfy this subparagraph to meet the definition of a “shared  
11 gang database.”

12 (2) A “shared gang database” does not include dispatch operator  
13 reports, information used for the administration of jail or custodial  
14 facilities, criminal investigative reports, probation reports, or  
15 information required to be collected pursuant to Section 186.30.

16 (3) Notwithstanding subparagraph (C) of paragraph (1), a  
17 “shared gang database” includes the CalGang system, operated  
18 pursuant to Part 23 of Title 28 of the Code of Federal Regulations.

19 (b) Notwithstanding subparagraph (C) of paragraph (1) of  
20 subdivision (a), a shared gang database, as defined in this section,  
21 shall retain records related to the gang activity of the individuals  
22 in the database consistent with the provisions contained in Section  
23 23.20(h) of Title 28 of the Code of Federal Regulations.

24 (c) (1) Commencing ~~December 1, 2017~~, *January 15, 2018*, and  
25 annually on ~~December 1~~ *January 15* thereafter, any law  
26 enforcement agency that elects to utilize a shared gang database,  
27 as defined in subdivision (a), shall submit a report to the  
28 Department of ~~Justice~~ *Justice*, in a format developed by the  
29 *department*, that contains, by ZIP Code, referring agency, race,  
30 gender, and age, the following information:

31 (A) The number of persons included in the database on the day  
32 of reporting.

33 (B) The number of persons added to the database during the  
34 immediately preceding 12 months.

35 (C) The number of requests for removal of a person from the  
36 database received during the immediately preceding 12 months.

37 (D) The number of requests for removal of a person from the  
38 database that were granted during the immediately preceding 12  
39 months.

1 (E) The number of persons automatically removed from the  
2 database during the immediately preceding 12 months.

3 (2) Commencing ~~January 1, February 15, 2018,~~ and annually  
4 on ~~December 1 February 15~~ thereafter, the Department of Justice  
5 shall submit a report to the CalGang Executive Board and to the  
6 Legislature that contains the information collected pursuant to  
7 ~~paragraph (1)~~. *post each law enforcement agency's report that*  
8 *contains the information collected pursuant to paragraph (1) on*  
9 *the department's Internet Web site.*

10 ~~(3) A report submitted to the Legislature pursuant to subdivision~~  
11 ~~(a) shall comply with Section 9795 of the Government Code.~~

12 (d) (1) To the extent a local law enforcement agency elects to  
13 utilize a shared gang database, as defined in subdivision (a), prior  
14 to a local law enforcement agency designating a person as a  
15 suspected gang member, associate, or affiliate in a shared gang  
16 database, or submitting a document to the Attorney General's  
17 office for the purpose of designating a person in a shared gang  
18 database, or otherwise identifying the person in a shared gang  
19 database, the local law enforcement agency shall provide written  
20 notice to the person, and shall, if the person is under 18 years of  
21 age, provide written notice to the person and his or her parent or  
22 guardian, of the designation and the basis for the designation,  
23 unless providing that notification would compromise an active  
24 criminal investigation or compromise the health or safety of the  
25 minor.

26 (2) The notice described in paragraph (1) shall describe the  
27 process for the person, or, if the person is under 18 years of age,  
28 for his or her parent or guardian, or an attorney working on behalf  
29 of the person, to contest the designation of the person in the  
30 database. The notice shall also inform the person of the reason for  
31 his or her designation in the database.

32 (e) (1) (A) A person, or, if the person is under 18 years of age,  
33 his or her parent or guardian, or an attorney working on behalf of  
34 the person may request information of any law enforcement agency  
35 as to whether the person is designated as a suspected gang member,  
36 associate, or affiliate in a shared gang database accessible by that  
37 law enforcement agency and what law enforcement agency made  
38 the designation. A request pursuant to this paragraph shall be in  
39 writing.

1 (B) If a person about whom information is requested pursuant  
2 to subparagraph (A) is designated as a suspected gang member,  
3 associate, or affiliate in a shared gang database by that law  
4 enforcement agency, the person making the request may also  
5 request information as to the reason for the designation for the  
6 purpose of contesting the designation as described in subdivision  
7 (f).

8 (2) The law enforcement agency shall provide information  
9 requested under paragraph (1), unless doing so would compromise  
10 an active criminal investigation or compromise the health or safety  
11 of the person if the person is under 18 years of age.

12 (3) The law enforcement agency shall respond to a valid request  
13 pursuant to paragraph (1) in writing to the person making the  
14 request within 30 calendar days of receipt of the request.

15 (f) Subsequent to the notice described in subdivision (d), the  
16 person to be designated as a suspected gang member, associate,  
17 or affiliate, or his or her parent or guardian, may submit written  
18 documentation to the local law enforcement agency contesting the  
19 designation. The local law enforcement agency shall review the  
20 documentation, and if the agency determines that the person is not  
21 a suspected gang member, associate, or affiliate, the agency shall  
22 remove the person from the shared gang database. The local law  
23 enforcement agency shall provide the person and his or her parent  
24 or guardian with written verification of the agency's decision  
25 within 30 days of submission of the written documentation  
26 contesting the designation. If the law enforcement agency denies  
27 the request for removal, the notice of its determination shall state  
28 the reason for the denial. The person may appeal the denial  
29 pursuant to Section 186.35.

30 (g) A person designated as a suspected gang member, associate,  
31 or affiliate in a shared gang database who has not been convicted  
32 of a violation of Section 186.22 within three years of the initial  
33 designation shall be removed from the database.

34 (h) Nothing in this section shall require a local law enforcement  
35 agency to disclose any information protected under Section 1040  
36 or 1041 of the Evidence Code or Section 6254 of the Government  
37 Code.

38 SEC. 2. Section 186.35 is added to the Penal Code, to read:

39 186.35. (a) A person who is listed by a law enforcement agency  
40 in a shared gang database as a gang member, suspected gang

1 member, associate, or affiliate may contest that designation  
2 pursuant to this section. The person may contest the designation  
3 initially pursuant to this section or a denial as specified in  
4 subdivision (f) of Section 186.34.

5 (b) The person may request an administrative hearing to review  
6 the designation decision.

7 (c) An administrative hearing shall be held within 90 calendar  
8 days following the receipt of a request for an administrative  
9 hearing. The person requesting the hearing may request one  
10 continuance, not to exceed 21 calendar days.

11 (d) The administrative hearing shall be conducted in accordance  
12 with written procedures established by the agency. The hearing  
13 shall provide an independent, objective, fair, and impartial review  
14 of a contested designation.

15 (e) The agency shall appoint or contract with qualified examiners  
16 or administrative hearing providers that employ qualified examiners  
17 to conduct the administrative hearings. Examiners shall  
18 demonstrate those qualifications, training, and objectivity necessary  
19 to conduct a fair and impartial review.

20 (f) The examiner’s decision following the administrative hearing  
21 may be personally delivered to the person by the examiner or sent  
22 by first-class mail, and, if the designation is not canceled, shall  
23 include a written reason for that denial.

24 (g) Within 30 calendar days after the mailing or personal  
25 delivery of the examiner’s decision, the person may seek review  
26 by filing an appeal to be heard by the superior court where the  
27 appeal shall be heard de novo. A copy of the notice of appeal shall  
28 be served in person or by first-class mail upon the agency by the  
29 person. For purposes of computing the 30-calendar-day period,  
30 Section 1013 of the Code of Civil Procedure shall be applicable.

31 (h) The fee for filing the notice of appeal is as provided in  
32 Section 70615 of the Government Code. The court shall notify the  
33 person of the appearance date by mail or personal delivery. The  
34 court shall retain the fee under Section 70615 of the Government  
35 Code regardless of the outcome of the appeal. If the court finds in  
36 favor of the person, the amount of the fee shall be reimbursed to  
37 the person by the agency.

38 (i) The law enforcement agency has the burden of demonstrating  
39 active gang membership, associate status, or affiliate status to the  
40 court by clear and convincing evidence.

1 (j) A successful challenge to the designation shall result in the  
2 removal of the person from the shared gang database.

3 SEC. 3. If the Commission on State Mandates determines that  
4 this act contains costs mandated by the state, reimbursement to  
5 local agencies and school districts for those costs shall be made  
6 pursuant to Part 7 (commencing with Section 17500) of Division  
7 4 of Title 2 of the Government Code.

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